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6 Attorney for **SANCHEZ-OSUNA**

7
8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA,
11 Plaintiff,
12 vs.
13 JOSE SANCHEZ-OSUNA,
14 Defendant.

2:12-cr-447-GMN-GWF and
2:12-cr-389-GMN-VCf

**MOTION TO ALLOW LATE FILING
OF NOTICE OF APPEAL**

AND ORDER

15
16 COMES NOW the defendant, Jose Sanchez-Osuna, by and through Assistant Federal Public
17 Defender Alina M. Shell, and respectfully requests that this Court enter an order excusing Jose
18 Sanchez-Osuna's late filing of a notice of appeal to the United States Court of Appeals for the Ninth
19 Circuit from the Judgments entered in the above captioned cases, as well as the Court's collateral
20 order denying his motion for appointment of CJA counsel for the purposes of appeal.

21 This motion is made pursuant to Federal Rule of Appellate Procedure 4(b)(4) and is based
22 upon the following Points and Authorities filed herewith.

23 DATED this 23rd day of October, 2003.
24

25 RENE L. VALLADARES
Federal Public Defender

26 /s/ Alina M. Shell

27 By: _____
ALINA M. SHELL,
28 Assistant Federal Public Defender

MEMORANDUM OF POINTS AND AUTHORITIES

Federal Rule of Appellate Procedure (FRAP) 4(b)(1)(A)(I) mandates that a notice of appeal in a criminal case must be filed within fourteen days after the entry of judgment. If a defendant fails to file within the fourteen day-window, Rule 4(b)(4) provides that “[u]pon a showing of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time or filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).” *See* FRAP 4(b)(4).

In the instant matter, Mr. Sanchez-Osuna’s failure to file a timely notice of appeal from this Court’s entry of judgment and order in the above-captioned case can be excused for good cause.

On March 4, 2013, pursuant to a plea agreement with the government, Mr. Sanchez-Osuna pleaded guilty to one count of Deported Alien Found Unlawfully in the United States, a violation of 8 U.S.C. § 1326. (*See* case no. 2:12-cr-00389-GMN-GWF Trial Court Clerk’s Record (CR) 26 (change of plea); *see also* CR 27 (plea agreement); *see also* case no. 2:12-cr-00447-GMN-GWF CR 17 (plea agreement).) As part of the plea agreement, Mr. Sanchez-Osuna agreed to waive his right to appeal any sentence imposed by this Court, the right to appeal the manner in which the Court determined that sentence, and the right to appeal any other aspect of the conviction or sentence. (*See* case no. 2:12-cr-00389-GMN-GWF CR 17, pp. 9-10.) Mr. Sanchez-Osuna also waived all collateral challenges, except for non-waivable claims of ineffective assistance of counsel. (*See id.* at 10.) Mr. Sanchez-Osuna waived this rights on the advice of counsel.

On September 5, 2013, this Court sentenced Mr. Sanchez-Osuna to fifty-one months incarceration. (*See* case no. 2:12-cr-00389-GMN-GWF CR 36 (minutes of sentencing); *see also* CR 38 (judgment in a criminal case); case no. 2:12-cr-00447-GMN-GWF CR 25 (minutes of supervised release hearing held in tandem with sentencing in case no. 2:12-cr-00389-GMN-GWF).) After this Court sentenced Mr. Sanchez-Osuna, he informed Ms. Korenblat that he wished to appeal his sentence. Citing the conflict of interest created by Mr. Sanchez-Osuna’s pursuit of an appeal, Ms. Korenblat moved this Court to permit her to withdraw, and requested the Court appoint appellate counsel. (*See* case no. 2:12-cr-00389-GMN-GWF CR 37 (motion to withdraw); *see also* 2:12-cr-00447-GMN-GWF CR 27.)

On September 12, 2013, this Court entered written judgments in both cases. (*See* 2:12-cr-00389-GMN-GWF CR 39; 2:12-cr-00447-GMN-GWF CR 26.) The same day, the Court issued an order granting Ms. Koreblat's motion to withdraw, but denying without prejudice the motion to appoint counsel. (*See* 2:12-cr-00389-GMN-GWF CR 39; 2:12-cr-00447-GMN-GWF CR 28.) In its denial of the motion for appointment of counsel, the Court held that the motion was premature because Ms. Koreblat acknowledged the waiver of appeal, and that counsel could be appointed if Mr. Sanchez-Osuna chose to file a petition to set aside his conviction pursuant to 28 U.S.C. § 2255.

On September 20, 2013, undersigned counsel filed an unopposed motion requesting that this Court reconsider its order denying appointment of counsel. (*See* 2:12-cr-00389-GMN-GWF CR 40; 2:12-cr-00447-GMN-GWF CR 29.) Undersigned counsel subsequently filed two addendums to her motion for reconsideration. While waiting for the resolution of the motion, the deadline for filing the notice of appeal—September 26, 2013—came and went.

The failure to file a notice of appeal was not due to oversight or neglect, but because undersigned counsel was attempting to resolve the motion for reconsideration she filed with this Court. Pursuant to the exception outlined in FRAP 4(b)(4), undersigned counsel asserts that she has established good cause to excuse the late filing of the attached notice of appeal.

On October 22, 2013, undersigned counsel spoke to United States Attorney Elizabeth White, Appellate Chief for the United States Attorney's Office for the District of Nevada. The government has no opposition to this motion.

Respectfully submitted,

RENE L. VALLADARES
Federal Public Defender

/s/ Alina M. Shell

By: _____
ALINA M. SHELL,
Assistant Federal Public Defender

IT IS SO ORDERED.

IT IS FURTHER ORDERED that Defendant's MOTION for District Judge to Reconsider Order (ECF No. 29) is hereby **DENIED as moot**.



Gloria M. Navarro
United States District Judge

DATED: 11/13/13

EXHIBIT “A”

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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA,
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14 Defendant.
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2:12-cr-447-GMN-GWF and
2:12-cr-389-GMN-VCF

NOTICE OF APPEAL

16 NOTICE is hereby given that JOSE SANCHEZ-OSUNA, defendant herein, hereby appeals
17 from any adverse rulings and determinations in this matter to the United States Court of Appeals for
18 the Ninth Circuit from the judgment and conviction entered on September 12, 2013.

19 DATED this the 23rd day of October, 2013.
20

21 RENE L. VALLADARES
Federal Public Defender

22 /s/ Alina M. Shell

23 By: _____
24 ALINA M. SHELL
Assistant Federal Public Defender
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27
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